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Committee on Economic, Social and Cultural Rights

Sixty-third session

Summary record of the 11th meeting*

Held at the Palais Wilson, Geneva, on Monday, 19 March 2018, at 10 a.m.

Chair: Ms. Bras Gomes

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* No summary record was issued for the 10th meeting.

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The meeting was called to order at 10 a.m.

Substantive issues arising from the implementation of the International Covenant on Economic, Social and Cultural Rights (*continued*)

Submissions by national human rights institutions and non-governmental organizations (*continued*)

New Zealand

1. **Mr. Blank** (Action for Children and Youth Aotearoa) said that unconscious bias on the part of the authorities in New Zealand impeded access to economic, social and cultural rights for Māori, who experienced less favourable outcomes in a wide range of areas, including education, health care and employment. Although they constituted only 15 per cent of the country's population, Māori accounted for 50 per cent of the male prison population and 65 per cent of the female prison population. In 2015, the Commissioner of Police had said that the police had an unconscious bias against Māori. A recent ruling by the Court of Appeal had made it clear that racial profiling should have no place in the justice system. The Government ought to develop a strategy to address bias across all services and set targets for Māori equality.

2. **Mr. Rutherford** (New Zealand Human Rights Commission) said that, despite the high standard of living in New Zealand, increasing numbers of people were without adequate housing or sufficient income to cover their basic needs. There were also significant disparities between population groups, with Māori, Pasifika and persons with disabilities having poorer outcomes than other groups in the areas of health, employment and education. To address the widening gaps, the rights enshrined in the Covenant needed to be embedded in the legislative framework, particularly the key statutes that underpinned government decision-making. Such legislative reforms should be accompanied by a genuine commitment to the Sustainable Development Goals. Greater recognition of the Treaty of Waitangi within the constitutional framework would boost economic and social outcomes for Māori. Home ownership rates had dropped significantly, particularly among Māori and Pasifika. Māori also had higher morbidity and mortality rates than other population groups. Persons with disabilities had lower rates of participation in the work force. Women earned less than men and were underrepresented in senior positions.

3. **Mr. McIntosh** (Human Rights Foundation of New Zealand), speaking via video link from Wellington, said that the rights enshrined in the Covenant ought to be recognized in the legislative system, particularly with regard to justiciability before the Courts and accession to the Optional Protocol. The Human Rights Foundation recommended that the Government should develop a national action plan on human rights, address the issue of violence against women and reform the social security sector, particularly with regard to punitive sanctions. The Foundation had concerns about how the Government would fulfil its obligations in connection with the activities of companies operating extraterritorially. It was also concerned about the rights of refugees and asylum seekers, the availability and quality of water, the rights of older persons and the issue of climate change and human rights.

4. **Ms. Howden-Chapman** (He Kainga Oranga/Housing and Health Research), speaking via video link from Wellington, said that homelessness was a growing issue that disproportionately affected Māori and Pasifika, who were more likely to live in rented accommodation. Much of the State housing stock had been transferred to private ownership and rental housing tended to be of poorer quality. Housing assistance supplements had risen by 50 per cent since 2008. New housing was unaffordable or was built far from cities, entailing higher commuting costs.

5. **Ms. Jamison** (Action for Children and Youth Aotearoa and Child Poverty Action Group/IHC New Zealand), speaking via video link from Wellington, said that New Zealand had no overarching strategy on child well-being, although legislation in that area was before Parliament. Approximately 44,000 children were admitted to hospital each year with preventable diseases linked to poverty and poor housing conditions. Children with disabilities were often excluded from schools. The youth suicide rate was high, with 51

young persons aged between 10 and 19 years having died by suicide in the 12 months to June 2017. The financial assistance available through in-work tax credits was tied to the number of paid hours of work caregivers undertook and discriminated against full-time caregivers who were raising children alone. She urged the Committee to endorse the recommendation of the Committee on the Rights of the Child regarding the need for a comprehensive strategy on children's rights.

6. Employment rates for persons with disabilities were significantly lower than for persons without disabilities. The Government ought to develop a strategy to ensure that persons with intellectual disabilities enjoyed an adequate standard of living, including appropriate health care. The absence of an inclusive education system in New Zealand meant that persons with disabilities had limited opportunities to be a part of their communities. There was no public funding to advocate for persons with intellectual disabilities and pathways to seeking redress for breaches of their rights were limited.

7. **Ms. Hughes** (Peace Movement Aotearoa), speaking on behalf of Tamaki Legal, via video link from Wellington, said that, between the 1960s and the 1990s, at least 100,000 children and persons with disabilities had been separated from their families and placed in State care. State agents had targeted Māori children in particular. Many, including the Harris family, had suffered physical, mental and sexual abuse while in the care of the State. Although the Royal Commission of Inquiry into Historical Abuse in State Care was under way, the Government had for several decades failed to provide adequate redress to the victims. The Committee was urged to echo the recommendations of the Human Rights Commission report, namely that the Government should resolve all claims within five years by establishing an independent body to provide rehabilitation, compensation and an apology to the victims, that the use of time-barred offences in cases of abuse in the care of the State should be discontinued and that any settlements with the Ngāpuhi *iwi* (tribal group) should include specific redress for the Harris family.

8. **Ms. Brown** (New Zealand Council of Trade Unions), speaking via video link from Wellington, said that there was a need for employment and trade union rights to be embedded in human rights legislation in New Zealand and for the rights enshrined in the Covenant to be included in the Bill of Rights. Hundreds of thousands of people were living in poverty or on low incomes and 600,000 people lacked job security. The new administration was taking steps to reverse the restrictions the previous Government had imposed on trade unions and collective bargaining. Her organization advocated the ratification of the International Labour Organization (ILO) Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87) and the ILO Minimum Age Convention, 1973 (No. 138).

9. **Mr. Jones** (Independent Monitoring Mechanism for the United Nations Declaration on the Rights of Indigenous Peoples in Aotearoa New Zealand and He Korowai Trust), speaking via video link from Wellington, said that the Independent Monitoring Mechanism for the United Nations Declaration on the Rights of Indigenous Peoples in Aotearoa New Zealand was concerned that the right to self-determination was not fully recognized or protected for Māori. A fundamental shift was required in order to ensure that *tikanga* — Māori law and culture — was properly valued and reflected in laws and policies. The Government should consider implementing the United Nations Declaration on the Rights of Indigenous Peoples, develop a national action plan in that regard and provide support and resources to the Independent Monitoring Mechanism to monitor progress.

10. The He Korowai Trust was concerned about the lack of recognition of the right of Māori to self-determination. The climate crisis was a key public health issue, the effects of which were likely to be felt first and most severely by Māori. Experts were predicting that the Comprehensive and Progressive Agreement for Trans-Pacific Partnership would have a negative impact on Māori communities and undermine the Government's responsibility to protect the environment and uphold citizens' rights. The Trust recommended that the Government should halt the implementation of the Agreement until it was amended to comply with policies protecting democratic and environmental rights.

11. **Ms. Hughes** (Peace Movement Aotearoa) said that no measures had been taken to recognize the right of Māori to self-determination, to ensure their free, prior and informed

consent or to address structural discrimination relating to access to justice, health care and housing. Declarations of inconsistency issued by the courts under the Bill of Rights Act had little impact in practice, as the Act did not cover economic and social rights and the courts had no power to strike down inconsistent legislation. She urged the Committee to raise the issue of spending priorities with the Government as, instead of reducing the military budget and increasing social expenditure, the Government had increased its spending on defence. There were also concerns relating to the appointment process for members of the New Zealand Human Rights Commission and the erosion of the Commission's operational independence.

12. **Mr. Sadi** said that he would welcome clarification of the term "unconscious bias", in the context of attitudes towards Māori. In addition to information on the situation of ethnic minorities, the Committee would also appreciate information on the enjoyment of Covenant rights by the rest of the population of New Zealand.

13. **Ms. Shin** said that she would welcome information on problems relating to the extraterritorial obligations of businesses and the status and role of the national contact point for the Guidelines for Multinational Enterprises of the Organization for Economic Cooperation and Development (OECD), including the transparency of its work and the appointment process.

14. **The Chair** said that it was important to avoid making the realization of the Covenant rights dependent on the sustainable development process, as the Sustainable Development Goals were not an end in themselves. In the light of reports that the OECD national contact point lacked adequate resources, it should be considered that the contact point might not provide the best means of assessing compliance with human rights obligations by businesses.

15. **Mr. Blank** (Action for Children and Youth Aotearoa) said that unconscious bias was an aspect of human behaviour whereby people were naturally drawn to those who were similar to them and suspicious of those perceived as different. For example, white teachers often spent less time with and gave less encouragement to Māori pupils, although that was unintentional. While the term "racism" had a polarizing impact, the concept of "unconscious bias" opened up space for dialogue, as people would more readily relate to such bias in their own behaviour.

16. **Mr. Rutherford** (New Zealand Human Rights Commission) said that, although his country lagged behind in the area of business and human rights, there were nevertheless encouraging signs indicating that the new administration might adopt a different approach. The OECD national contact point, based within the Ministry of Business, Innovation and Employment, lacked adequate resources and did not operate on a tripartite basis. However, it was currently the only means of obtaining remedy and could serve a useful purpose if it was given the resources necessary to take action. The incoming Government had proposed to adopt an innovative approach by incorporating the OECD Better Life Index and the Sustainable Development Goals into its 2019 budget, in order to introduce a cross-governmental perspective, linking areas such as housing, health and standard of living.

17. **The Chair** asked whether the new Government was likely to integrate economic, social and cultural rights into the Bill of Rights.

18. **Mr. Rutherford** (New Zealand Human Rights Commission) said that, while it could be hoped that the Government would incorporate the Covenant rights into the Bill of Rights, it was important to continue to encourage ministries and other government bodies to include them in their policies and strategies. Many of the country's current problems were rooted in the past: its history was similar to that of other nations founded by settlers, giving rise to trauma with far-reaching repercussions, particularly for indigenous communities.

19. **Mr. Blank** (Action for Children and Youth Aotearoa) said that neoliberal economic restructuring in the 1980s and 1990s had increased economic disparities. For example, cuts to family benefits had correlated with an increase in the rate of child abuse in New Zealand.

20. **Ms. Hughes** (Peace Movement Aotearoa), speaking via video link from Wellington, said that the constitutional arrangement posed a fundamental problem, as power was not shared with the Māori and a simple parliamentary majority was required for Parliament to

impose its will. Turning to the issue of extraterritorial obligations, she said that the State party report contained no reference to legislation on the activities of companies from New Zealand operating overseas. She encouraged the Committee to raise that issue with the State party.

21. **Ms. Howden-Chapman** (He Kainga Oranga/Housing and Health Research), speaking via video link from Wellington, said that Māori and Pasifika made up approximately 20 per cent of the population. Civil society organizations focused on the rights of those minorities as they represented the most marginalized sector of society. Civil society organizations had campaigned vigorously to combat the impact of neoliberalism and ensure the election of a progressive government. It appeared that the new Government was developing an outcome-based budget, with a view to ensuring a cross-cutting approach. It was hoped that the new approach would be linked to specific rights, such as to housing, health and education.

22. **Mr. McIntosh** (Human Rights Foundation), speaking via video link from Wellington, said that the human rights situation in New Zealand was largely the result of more than 30 years of monetized, ideology-driven policies that had exacerbated social disparities and had a significant impact on human rights.

23. **Ms. Brown** (New Zealand Council of Trade Unions), speaking via video link from Wellington, said that the high levels of inequality in New Zealand society were linked to the neoliberal policies of the 1990s, including employment legislation that had undermined workers' rights. The negative repercussions of those measures were still being felt. Although some rights had been restored and certain provisions repealed, unionization rates remained low. It was hoped that the incoming Government would promote collective bargaining, thus helping to reduce inequality.

24. **Mr. Jones** (Independent Monitoring Mechanism for the United Nations Declaration on the Rights of Indigenous Peoples in Aotearoa New Zealand and He Korowai Trust), speaking via video link from Wellington, said that the constitutional arrangement had had a negative impact on human rights, perpetuating a decision-making system that marginalized certain groups, deprived them of economic benefits and fostered structural discrimination. Constitutional reform was needed, with a view to the development of a more inclusive and participatory model.

Spain

25. **Ms. Escorihuela** (Plataforma de los Derechos Económicos, Sociales y Culturales) said that a wide range of stakeholders, including civil society organizations, professional associations and trade unions had contributed to the drafting of the joint alternative report, which had also been presented to political parties in the national Parliament. The regressive measures adopted during the period of austerity had had a negative impact on many sectors, including housing and health care.

26. **Ms. Aguilar** (Center for Economic and Social Rights) said that the alternative report described the devastating impact of austerity measures adopted between 2012 and 2016 on economic and social rights, including the rights to health and to work, and the Government's failure to mitigate the direct impact of those measures. Spain was currently ranked as the third most unequal country in Europe; in 2016, nearly 30 per cent of the population had faced the threat of poverty or social exclusion. Instead of taking steps to allay the impact of austerity measures, the Government had introduced swingeing cuts to social programmes for the most vulnerable groups in society, including older persons, immigrants and persons with disabilities, and to initiatives aimed at tackling gender discrimination and unemployment. She encouraged the Committee to closely examine the issue of budgetary cuts in its dialogue with the Government.

27. Moreover, the State had made no effort to increase its financial resources. The Government had introduced tax amnesties and spending cuts, when it should instead have implemented measures to curb tax evasion, which would have allowed it to recoup approximately 40 million euros per year, or to combat tax avoidance. The examination of the State party report provided an opportunity for the Government to reverse the situation

and to make optimal use of the available resources to mitigate the impact of the economic crisis and subsequent austerity measures on the most vulnerable groups in society.

28. **Mr. Duyck** (Center for International Environmental Law) said that Spanish energy and climate policies had an adverse impact on the economic, social and cultural rights of communities, including the right to health, the right not to be deprived of one's means of subsistence, the right to an adequate standard of living and the right to water. He urged the Committee to review evidence concerning the impact of air pollution from coal-fired power plants on health and on the climate. Scientific studies had found that such pollution had a significant impact on the health of populations both within Spain and outside its national territory and was responsible for hundreds of premature deaths and thousands of illnesses each year. The Government had granted special derogations, exempting such facilities from mandatory European Union standards aimed at limiting air pollution. He called on the Committee to encourage Spain to regulate private actors operating coal power plants and to guarantee the enforcement of stricter European Union pollution standards.

29. Although Spain was a party to the United Nations Framework Convention on Climate Change, the Kyoto Protocol and the Paris Agreement, it had failed to enact comprehensive climate legislation or to adopt a long-term strategy to achieve a reduction in emissions from all relevant economic sectors. Although greenhouse gas emissions had begun to decrease in 2008, they had then remained at the same level since 2013. He called on the Committee to recommend that the State party should adopt a legally binding climate change framework with medium-term and long-term emission reduction targets in line with the objectives contained in the Paris Agreement, and develop a comprehensive strategy to ensure that all economic sectors implemented the framework.

30. **Mr. Uprimny** said that the Committee's 2012 letter on austerity measures had underscored the need for compensatory measures to support vulnerable communities and for consultation with the general public. He asked whether any such action had been taken. Noting that the constitutional reform of 2012 had established the principle of budgetary stability, he asked what its substantive and procedural impact had been on austerity measures, given that it authorized the Government to take decisions without engaging in extensive legislative consultations. Given the existence of disparities between the autonomous communities in terms of enjoyment of rights, he asked what recommendations the Committee should make to remedy such disparities, while protecting the principle of regional autonomy.

31. **Mr. Sadi** said he would be interested to hear what the grounds were for the State party's failure to take the necessary action against pollution, despite its obligations under the Paris Agreement. He also wished to know which neighbouring countries had complained about the impact of cross-border pollution from Spain.

32. **Ms. Crăciunean-Tatu** enquired what the impact of the Organic Act on Improving the Quality of Education had been on the segregation of Roma and migrant students within and between schools. She asked whether the implementation of Organic Act No. 3/2007 had helped to overcome stereotypical attitudes regarding the role and responsibilities of women and men in the family and society.

33. **Mr. Dasgupta** said he would like further information on how the State party had exempted itself from European Union regulations on air pollution. He had been informed that the distribution of targets under the Paris Agreement was an unresolved issue for the European Commission because individual European States had failed to indicate their targets. What was the position of Spain on that issue?

34. **Mr. De Schutter** said that, since its decision in the case of *I.D.G. v. Spain* (communication No. 2/2014), the Committee had received a number of communications regarding the effectiveness of remedies against threatened eviction and the implementation of mortgage-related legislation. He asked whether the State party had considered reviewing legislation that affected the right to housing.

35. **Mr. Kedzia** said that the labour market reform of 2012 had been introduced as an urgent response to a critical situation, on which discussion had been precluded. However, as such urgency no longer existed, he would like to know whether the trade unions were

able to participate in current decision-making on austerity measures and the economic system as a whole.

36. The Committee had been informed in the joint report from 36 civil society organizations that the youth unemployment rate was 44 per cent, that 70 per cent of young people under the age of 25 were in temporary employment, and that 14.6 per cent of young people were not in education, employment or training in 2016. He found the figures somewhat confusing. He asked whether the austerity measures taken since 2012 were perceived by the Government as temporary or lasting solutions. The Committee had underscored in its 2012 letter that, while austerity measures might be necessary in certain circumstances, they must in all cases be temporary.

37. **The Chair** enquired how the lessons learned by the Government from the disruptive impact of austerity had been taken on board in the so-called post-recovery period.

38. **Ms. Escorihuela** (Plataforma de los Derechos Económicos, Sociales y Culturales) said that the Government's significant majority in Parliament in recent years had enabled it to introduce austerity measures without engaging in extensive consultations with other political parties and civil society. Most of its decisions had been taken unilaterally. There was no national human rights plan and the Ombudsperson received very little information from the Government. For instance, the Government had failed to reply to a question from the Ombudsperson regarding the right to housing. Austerity measures had led to underfunding of health-care and educational services and high unemployment rates. Precarious situations had persisted during the recovery period and almost 90 per cent of new labour contracts were temporary. Wages were low and the cost of living, including housing and basic services, was increasing.

39. The 2012 amendment to article 135 of the Constitution had had a major impact on public finances and restricted the ability of authorities at the State, local and autonomous levels to invest in resources and to recruit staff. The funding of autonomous regions was frequently based on agreements between the Government and the autonomous communities. However, responsibility for many social services, such as health, housing and education, lay exclusively with the communities. School dropout rates among the Roma community had not improved in recent years. While progress had been made in the area of gender equality, there were still shortcomings, for instance in terms of access to housing for women victims of abuse or gender violence.

40. A monitoring group composed of human rights organizations had been established to keep track of follow-up given to the Committee's conclusions and recommendations. It had held a meeting with a group representing the governing party, the Partido Popular, which had claimed that the recommendations would be disseminated. However, tenant security was not perceived as a priority, notwithstanding the high rate of eviction for failure to pay rent. The State Housing Plan 2018–2021 had been published the previous week, but less funds had been allocated than under the Housing Plan 2013–2016. No provision was made for an increase in public housing and evicted persons would not be rehoused. The monitoring group had tried to arrange meetings with the Ombudsperson and parliamentary groups with a view to persuading the Government to implement the Committee's recommendations, but there had been no response from the Government.

41. The eviction procedure was currently a speedy process that did not permit persons evicted to explain why their rent remained unpaid, even when eviction meant that minors would be living on the street. The authorities had decided that it was not a priority issue. In some autonomous communities, information regarding cases of vulnerability was provided to the courts by the social service authorities. It was then for the judge to take a decision.

42. **Ms. Aguilar** (Center for Economic and Social Rights) said that the years of austerity had had a serious long-term impact on society. Inequality was far greater than in the past and had not been remedied by the relative economic recovery since 2014. There was no plan to roll back the austerity measures. On the contrary, the measures adopted during the harshest period remained part of public policy. For example, Royal Decree-Law No. 1192/2012 on the National Health System deprived undocumented adult migrants of free access to health services. The Constitutional Court had upheld the Royal Decree-Law in

2016 and the authorities firmly opposed all action, for instance in the autonomous communities, to protect migrants.

43. With regard to the question on youth unemployment, the figure of 14.6 per cent referred to young people who were unemployed and were not involved in any type of academic or vocational education or training. The constitutional reform of 2012, which permitted the State to limit social expenditure, was still in force. It also enabled the Government to speed up the adoption of royal decree-laws, which were not debated in the Congress of Deputies.

44. **Mr. Duyck** (Center for International Environmental Law) said that the three countries most affected by atmospheric pollution generated by coal-fired power plants in Spain were Portugal, Italy and France. They had not filed formal complaints, since bilateral complaints invoking international environmental law were very rare. The lack of political will in Spain to address issues related to coal in the energy sector might be a result of local political resistance, especially in north-western regions, on the ground that coal-fired power plants created local jobs. The authorities' failure to take serious action meant both that communities suffered the impact of atmospheric pollution and that workers could be adversely affected by the rapid decarbonization of the energy sector.

45. Spain was not the largest coal user in Europe, but it was the fourth largest coal consumer. Despite the growth of renewable energy in recent years, there had been no decline in emissions of carbon dioxide in the energy sector. As concerned the exemption from European Union environmental regulations, Directive 2010/75/EU of the European Parliament and of the Council of 24 November 2010 on industrial emissions allowed member States to apply for specific exemptions. All 16 coal-fired power plants in Spain were covered by one of the three key exemptions, notwithstanding their impact on the health of local communities. With regard to the Paris Agreement, Spain had set a particularly generous target for the period from 2008 to 2012 but had nonetheless failed to meet it. Furthermore, it had not addressed the issue systematically in the meantime, and emissions in virtually all economic sectors were projected to increase in the medium and long term.

The discussion covered in the summary record ended at 12.10 p.m.